

REMARKS

I. Status of the Claims

Claims 1-28 are pending in this application. Claim 1 has been amended herein to incorporate the limitations recited in claim 6, with the exception of the fluorescent dye of formula (F3). Claims 5 and 6 have been canceled. Claim 7 has been amended to correct dependency. No new matter has been added.

II. Nonstatutory Obviousness-Type Double Patenting Rejection

The Examiner has provisionally rejected the claims under the judicially created doctrine of obviousness-type double patenting over thirteen co-pending U.S. patent applications. See Office Action, pages 2-4. Each rejection is addressed below under separate enumerated headings.

1. U.S. Patent Application No. 10/814,300

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 34, 36-37, 46-48 in U.S. Patent Application No. 10/814,300. See Office Action, page 2. Although Applicants disagree with the rejection, they have filed together with this response a terminal disclaimer over, *inter alia*, U.S. Patent Application 10/814,300 to render the rejection moot. This rejection should therefore be withdrawn.

2. U.S. Patent Application No. 10/814,305

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 44, 46-47, and 49 in U.S. Patent Application No. 10/814,305. See Office Action, page 2. Although Applicants disagree with the rejection, they have filed together with this response a terminal disclaimer over, *inter alia*, U.S. Patent Application No. 10/814,305 to render the rejection moot. This rejection should therefore be withdrawn.

3. U.S. Patent Application No. 10/814,430

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 41, 43-44, and 46 in U.S. Patent Application No. 10/814,430. See Office Action, page 2. Although Applicants disagree with the rejection, they have filed together with this response a terminal disclaimer over, *inter alia*, U.S. Patent Application No. 10/814,430 to render the rejection moot. This rejection should therefore be withdrawn.

4. U.S. Patent Application No. 10/814,334

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 35, 37-38, 40 and 42 in U.S. Patent Application No. 10/814,334. See Office Action, page 2. Although Applicants disagree with the rejection, they have filed together with this response a terminal disclaimer over, *inter alia*, U.S. Patent Application No. 10/814,334 to render the rejection moot. This rejection should therefore be withdrawn.

5. U.S. Patent Application No. 10/814,338

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 1-24 in U.S. Patent Application No. 10/814,338. See Office Action, page 2. Although Applicants disagree with the rejection, they have filed together with this response a terminal disclaimer over, *inter alia*, U.S. Patent Application No. 10/814,338 to render the rejection moot. This rejection should therefore be withdrawn.

6. U.S. Patent Application No. 10/814,236

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 36, 40-41, 43, 55, and 56 in U.S. Patent Application No. 10/814,236. See Office Action, page 2. Although Applicants disagree with the rejection, they have filed together with

this response a terminal disclaimer over, *inter alia*, U.S. Patent Application No. 10/814,236 to render the rejection moot. This rejection should therefore be withdrawn.

7. U.S. Patent Application No. 10/814,585

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 47, 49-50, and 54 in U.S. Patent Application No. 10/814,585. See Office Action, page 2. Although Applicants disagree with the rejection, they have filed together with this response a terminal disclaimer over, *inter alia*, U.S. Patent Application No. 10/814,585 to render the rejection moot. This rejection should therefore be withdrawn.

8. U.S. Patent Application No. 10/814,337

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 39, 41-44, and 47 in U.S. Patent Application No. 10/814,337. See Office Action, page 2. Although Applicants disagree with the rejection, they have filed together with this response a terminal disclaimer over, *inter alia*, U.S. Patent Application No. 10/814,337 to render the rejection moot. This rejection should therefore be withdrawn.

9. U.S. Patent Application No. 10/742,995

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 1, 44, 46, and 47 in U.S. Patent Application No. 10/742,995. See Office Action, page 2. Although Applicants disagree with the rejection, they have filed together with this response a terminal disclaimer over, *inter alia*, U.S. Patent Application No. 10/742,995 to render the rejection moot. This rejection should therefore be withdrawn.

10. U.S. Patent Application No. 10/814,336

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 1-3 in U.S. Patent Application No. 10/814,336. See Office Action, page 2. Although

Applicants disagree with the rejection, they have filed together with this response a terminal disclaimer over, *inter alia*, U.S. Patent Application No. 10/814,336 to render the rejection moot. This rejection should therefore be withdrawn.

11. U.S. Patent Application No. 10/814,428

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 47-49 and 64-65 in U.S. Patent Application No. 10/814,428. See Office Action, page 2. Although Applicants disagree with the rejection, they have filed together with this response a terminal disclaimer over, *inter alia*, U.S. Patent Application No. 10/814,428 to render the rejection moot. This rejection should therefore be withdrawn.

12. U.S. Patent Application No. 10/814,335

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 32 and 36-39 in U.S. Patent Application No. 10/814,335. See Office Action, page 2. Although Applicants disagree with the rejection, they have filed together with this response a terminal disclaimer over, *inter alia*, U.S. Patent Application No. 10/814,335 to render the rejection moot. This rejection should therefore be withdrawn.

13. U.S. Patent Application No. 10/490,869

The Examiner has provisionally rejected claims 1, 8, 9, 26, and 27 over claims 39, 44, and 49 in U.S. Patent Application No. 10/490,869. See Office Action, page 2. Although Applicants disagree with the rejection, they have filed together with this response a terminal disclaimer over, *inter alia*, U.S. Patent Application No. 10/490,869 to render the rejection moot. This rejection should therefore be withdrawn.

III. Claim Rejections

A. Rejection Under 35 U.S.C. § 102

The Examiner has rejected claims 1-6 and 10-20 under 35 U.S.C. § 102(b) or in the alternative under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2001/0054206 A1 to Matsunaga et al. ("*Matsunaga*") for the reasons disclosed on pages 4-5 of the Office Action. Applicants respectfully traverse this rejection.

According to the Examiner, *Matsunaga* teaches, among other things, a hair dyeing composition comprising an azomethine compound which is identical to the compound of formula F3 recited in claim 6. *Office Action*, page 2. Specifically, the Examiner contends that *Matsunaga* teaches all limitations of the present claims and thus anticipates the present invention. *Office Action*, page 3. In the alternative, the Examiner contends that because *Matsunaga* teaches an identical composition, "the properties applicant discloses and/or claims are necessarily present;" therefore, the claimed invention would have been obvious to one skilled in the art. *Office Action*, page 5. Applicants disagree.

A prior art reference anticipates a claim of an application only if each and every limitation as set forth in each claim is found, either expressly or inherently, in a single reference. M.P.E.P. § 2131. Moreover, as part of a prima facie case of obviousness, the Examiner must demonstrate that each and every claim limitation is taught or suggested by the prior art. M.P.E.P. § 2143.03. In view of the present amendment, neither of these required showings has been met.

Indeed, *Matsunaga* does not teach or suggest each limitation of the claims as presently amended, specifically, the fluorescent dyes corresponding to formulae (F1), (F2), and (F4). Rather, every direct dye disclosed in the *Matsunaga* reference is an azomethine dye. See para. [0007] - [0013]. Accordingly, this reference cannot anticipate or render obvious the presently amended claims. Applicants therefore respectfully request that the Examiner withdraw this rejection.

B. Matsunaga in view of Rondeau

The Examiner has rejected claim 7 over *Matsunaga* in view of U.S. Patent No. 6,436,153 B2 to Rondeau ("*Rondeau*"), for the reasons disclosed on page 6 of the Office Action. Applicants respectfully traverse this rejection.

The Examiner admits that *Matsunaga* does not teach or suggest a fluorescent compound according to claimed formula (F1) wherein X^- is chosen from iodide, sulphate and methosulphate anions. *Id.* Thus, the Examiner relies on *Rondeau* for this missing disclosure. The Examiner reasons that because *Matsunaga* suggests that other direct dyes can be used in its composition, one skilled in the art would have turned to *Rondeau* and selected one of its disclosed compounds, specifically the compound of formula (I4). *Id.* According to the Examiner, a person of skill in the art "would be motivated to incorporate the [compounds taught by *Rondeau*] and such a modification "would be" obvious. Applicants disagree.

Rondeau and *Matsunaga* cannot render claim 7 obvious because these references do not teach or suggest a compound of formula (F1) wherein X^- is chosen from iodide, sulphate and methosulphate anions. *Rondeau* only discloses a direct dye of formula (I4) wherein the anion is chlorine. Accordingly, even if *Rondeau* was

combined with *Matsunaga*, the collective teachings of these references would not render claim 7 obvious because every claim limitation is not taught. Accordingly, Applicants respectfully request that the Examiner withdraw this rejection.

C. Matsunaga in view of Vandenbossche

The Examiner has rejected claims 21-22 under 35 U.S.C. § 103(a) over *Matsunaga* in view of U.S. Patent No. 6,391,062 to Vandenbossche ("*Vandenbossche*") for the reasons disclosed on page 7 of the Office Action. Applicants respectfully traverse this rejection.

Because *Matsunaga* fails to teach the claimed amounts of the species of direct dye, the Examiner looks to *Vandenbossche* for this teachings. *Id. Matsunaga*, however, does not disclose or suggest hair dye compositions comprising fluorescent dyes corresponding to formulae (F1), (F2), and/or (F4), as recited in the presently amended claims. Accordingly, the further combination of this reference with *Vandenbossche* necessarily fails because *Vandenbossche* does not teach or suggest the claimed fluorescent dyes. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection over claims 21-22.

D. Matsunaga in view of Giuseppe

The Examiner has rejected claim 23 under 35 U.S.C. § 103(a) over *Matsunaga* in view of U.S. Patent No. 5,744,127 to Giuseppe et al. ("*Giuseppe*") for the reasons disclosed on page 8 of the Office Action. Applicants respectfully traverse this rejection.

Matsunaga also fails to teach that its composition can be in the form of a dyeing shampoo, accordingly, the Examiner relies on *Giuseppe* to supply this teaching. *Id. Matsunaga*, however, does not disclose or suggest hair dye compositions comprising

fluorescent dyes corresponding to formulae (F1), (F2), and/or (F4), as recited in the presently amended claims. Accordingly, this further proposed combination with *Giuseppe* is improper because *Giuseppe* does not remedy the deficiencies of *Matsunaga*. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection over claim 23.

E. Matsunaga in view of Wenke

The Examiner has rejected claim 24 under 35 U.S.C. § 103(a) over *Matsunaga* in view of U.S. Patent No 5,316,551 to Wenke et al. ("*Wenke*") for the reasons disclosed on pages 8-9 of the Office Action. Applicants respectfully traverse this rejection.

According to the Examiner, *Matsunaga* also fails to teach or disclose applying at least one alkaline aqueous composition with a pH of 10 before applying the dyeing composition, thus, the Examiner relies on *Wenke* to supply this teaching. *Id.*, page 8. *Matsunaga*, however, does not disclose or suggest hair dye compositions comprising fluorescent dyes corresponding to formulae (F1), (F2), and/or (F4), as recited in the presently amended claims. Accordingly, the further combination of this reference with *Wenke* must fail because *Wenke* does not cure the deficiencies of the underlying reference. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection over claim 24.

F. Matsunaga in view of Jacquet

The Examiner has rejected claim 25 under 35 U.S.C. § 103(a) over *Matsunaga* in view of U.S. Patent No 4,517,174 to Jacquet et al. ("*Jacquet*") for the reasons disclosed on pages 9-10 of the Office Action. Applicants respectfully traverse this rejection.

According to the Examiner, *Matsunaga* also fails to teach or disclose applying a reducing composition followed by an oxidizing composition, thus, the Examiner relies on *Wenke* to supply this teaching. *Id.*, page 9. *Matsunaga*, however, does not disclose or suggest hair dye compositions comprising fluorescent dyes corresponding to formulae (F1), (F2), and/or (F4) as recited in the presently amended claims. Accordingly, the further combination of this reference with *Jacquet* must fail because *Jacquet* does not cure the deficiencies of the underlying reference. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection over claims 25.

G. Matsunaga

The Examiner has rejected claims 26-28 under 35 U.S.C. § 103(a) over *Matsunaga* for the reasons disclosed on page 10 of the Office Action. Applicants respectfully traverse this rejection.

According to the Examiner, *Matsunaga* also fails to disclose the type of hair being dyed. *Id.* The Examiner contends, however, that because *Matsunaga* teaches an azamethine compound, one skilled in the art would have expected to use a composition comprising this compound on any type of hair. *Id.* Applicants disagree.

Matsunaga does not teach or suggest each limitation of the claims as presently amended, specifically, the fluorescent dyes corresponding to formulae (F1), (F2), and (F4). Accordingly, this reference cannot render obvious the presently amended claims. Applicants thus respectfully request that the Examiner withdraw this rejection.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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